JOBNAME: No Job Name PAGE: 1 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

A

Jaffari bin Waliam v Jeffery Aman & Ors

B

HIGH COURT (SANDAKAN) — ELECTION PETITION NO SDK-26 EP-3/6 OF 2013
STEPHEN CHUNG JC
26 AUGUST 2013

C

Election — Petition — Failure to plead — Petition to declare election null and void — Allegations of foul play in election — Whether allegations pleaded — Whether petition defective — Whether petition contained material facts — Whether application ought to be allowed — Election Offences Act 1954 — Election Petition Rules 1954

D

The petitioner, a voter at the 13th General Election in Parliamentary Constituency of Libaran, filed this election petition that the election of the third respondent be declared null and void on the grounds that the first and second respondents had directly or indirectly committed offences under ss 3 and 4 of the Election Offences Act 1954 ('Act'); and that the third respondent had committed acts contrary to s 10 of the Act. The third respondent argued that the election petition was fundamentally defective for non-compliance with rr 4(1)(b) and 4(4)(3) of the Election Petition Rules 1954 ('Rules') as the petitioner failed to provide the respective limbs of the relevant provisions; the matters pleaded did not contain material facts; the petitioner failed to plead on the alleged 'general bribery'. The third respondent also gave notice to raise a supplementary preliminary objection that the election petition be struck out with costs on the ground that it was fundamentally defective as the petitioner failed to specifically plead s 11(1)(b) of the Act.

E

F

G

Held, striking out the petition:

(1) The petition was defective and failed to plead the facts and ground relied upon to sustain prayers sought for. In election cases, strict compliance of election legislations and regulations was required otherwise any election petition would be rendered defective and liable to be struck out in limine. Under r 4(1)(b) of the Rules, it would be mandatory that an election petition shall state briefly the facts and grounds relied upon to sustain the prayers sought. The facts complained of narrated in petition must relate or associate with the provision of election laws which the respondents had allegedly transgressed. However, the petitioner did specifically plead and it was not clear whether the first respondent had committed the alleged offences under ss 3 and 4 of the Act (see paras 17–18).

H

I

JOBNAME: No Job Name PAGE: 2 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

(2) The petitioner did not plead or set out why it was wrong or inappropriate for the first respondent to use the hall for the purpose of the election, whether there was any bias or prejudice to the petitioner resulting from such use of the hall and whether and how that would affect the result of the election (see para 23).

(3) The petitioner did not plead whether and how many hours the indelible ink lasted. He had also failed to identify who and how many of those voters whose indelible ink on their finger had been washed and how many of them had voted again and committed fraud at the election. The petitioner did not plead whether the alleged fraud resulted from the use of the indelible ink and in any way or manner had so extensively prevailed that they might be reasonably supposed to have affected or have affected the result of the election (see para 24).

(4) Although the petitioner referred to s 10 of the Act, he did not plead and specify the requisite provisions of s 10 whether and how the third respondent had transgressed the specific provisions. Similarly, the petitioner failed to plead the requisite provisions of s 11 of the Act on whether and how the third respondent had transgressed the specific provisions (see para 40).

[Bahasa Malaysia summary

Pempetisyen, penggundi pada Pilihan Raya Umum ke-13 di Kawasan Parlimen Libaran, memfailkan petisyen pilihan raya ini bahawa pilihan raya responden ketiga diisytiharkan batal dan tak sah atas alasan bahawa responden-responden kedua dan ketiga telah secara terus melakukan kesalahan di bawah ss 3 dan 4 Akta Kesalahan Pilihan Raya 1954 ('Akta'); dan bahawa responden ketiga telah melakukan tindakan bertentangan s 10 Akta. Responden ketiga berhujah bahawa petisyen pilihan raya secara asasnya cacat kerana tidak mematuhi kk 4(1)(b) dan 4(4)(3) Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('Kaedah-Kaedah') kerana pempetisyen gagal untuk memberikan bahagian peruntukan yang relevan masing-masing; perkara yang diplid tidak mengandungi fakta material; pempetisyen gagal untuk memplid ke atas 'general bribery' yang didakwa. Responden ketiga juga memberi notis untuk membangkitkan bantahan awalan tambahan bahawa petisyen pilihan raya tersebut dibatalkan dengan kos atas alasan ia secara asasnya cacat memandangkan pempetisyen gagal untuk memplid s 11(1)(b) Akta secara khusus.

Diputuskan, membatalkan petisyen:

(1) Petisyen adalah cacat dan gagal untuk memplid fakta dan alasan yang digunakan untuk mengekalkan permohonan-permohonan yang dipohon. Dalam kes-kes pilihan raya, pematuhan ketat undang-undang dan peraturan-peraturan adalah perlu jika tidak apa-apa petisyen pilihan

JOBNAME: No Job Name PAGE: 3 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

raya akan menjadi cacat dan boleh dibatalkan *in limine*. Di bawah k 4(1)(b) Kaedah-Kaedah, adalah mandatori bahawa petisyen pilihan raya akan secara ringkas menyatakan fakta dan alasan-alasan yang digunakan untuk mengekalkan permohoan yang dipohon. Fakta yang diadukan yang dinyatakan di dalam petisyen mesti berkait dengan peruntukan undang-undang pilihan raya yang mana telah dilanggar oleh responden-responden. Walau bagaimanapun, pempetisyen tidak secara khusus dan ia adalah tidak memplid jelas sama ada responden pertama telah melakukan kesalahan yang didakwa di bawah ss 3 dan 4 Akta (lihat perenggan 17–18).

(2) Pempetisyen tidak memplid atau menyatakan mengapa ia adalah salah atau tidak sesuai untuk responden pertama menggunakan dewan bagi tujuan pilihan raya, sama ada terdapat apa-apa berat sebelah atau prejudis kepada pempetisyen akibat daripada penggunaan dewan sedemikian dan sama ada dan bagaimana itu akan menjejaskan keputusan pilihan raya (lihat perenggan 23).

(3) Pempetisyen tidak memplid sama ada dan berapa lama dakwat kekal bertahan. Dia juga gagal untuk mengenal pasti siapa dan berapa ramai penggundi-penggundi tersebut yang dakwat kekal di jari mereka telah dicuci dan berapa ramai daripada mereka menggundi lagi dan melakukan fraud di pilihan raya tersebut. Pempetisyen tidak memplid sama ada fraud yang didakwa akibat daripada penggunaan dakwat kekal dan dalam apa-apa tindakan cara atau telah mengatasi dengan secara besar iaitu bahawa ia mungkin secara munasabah sepatutnya menjejaskan atau telah menjejaskan keputusan pilihan raya tersebut (lihat perenggan 24).

(4) Walaupun pempetisyen merujuk kepada s 10 Akta, dia tidak memplid dan menyatakan peruntukan s 10 yang diperlukan sama ada dan bagaimana responden ketiga telah melanggar peruntukan spesifik tersebut. Begitu juga, pempetisyen gagal untuk memplid peruntukan s 11 yang diperlukan sama ada dan bagaimana responden ketiga telah melanggar peruntukan spesifik tersebut (lihat perenggan 40).]

Notes

For a case on failure to plead, see 6 *Mallal's Digest* (4th Ed, 2014 Reissue) para 2190.

Cases referred to

Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729, FC (refd)

Kho Whai Phiaw v Chong Chieng Jen [2009] 4 MLJ 776; [2009] 3 CLJ 201, FC (refd)

Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors [2009] 5 MLJ 153; [2009] 4 CLJ 488, FC (refd)

JOBNAME: No Job Name PAGE: 4 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors [2009] 3 MLJ 589; [2009] 3 CLJ 221, FC (refd)
Mohd Zaid bin Ibrahim v P Kamalanathan a/l P Panchanathan & Ors [2010] 6 MLJ 363; [2010] 8 CLJ 608 (refd)

Legislation referred to

Advocates Ordinance (Sabah Cap 2) s 9
Elections (Conduct of Elections) 1981 regs 24, 25
Elections Act 1958 s 9A
Election Offences Act 1954 ss 3, 4, 10, 10(2), 11, 11(1)(b), 26(1), 32(a), (b), (c), 38(2)
Election Petition Rules rr 3(1), (2), 4(1)(b), (4), (4)(3), 9, 15(1), (4), 21(1), (2)

Marcel Jude Joseph (Marcel Jude Joseph (2000) & Co) for the petitioner.
Mohd Radhi Abas (Senior Federal Counsel, Attorney General's Chambers) for the first and second respondents.
Abdul Ghani bin Zelika (Muammar Julkarnain with him) (Jumahad Julkarnain & Ahmadshah) for the third respondent.

Stephen Chung JC:

[1] The petitioner is a person who voted at the 13th General Election in the Parliamentary Constituency of P184 Libaran held on 5 May 2013. The third respondent was returned as being duly elected in the said constituency in the election.

[2] The petitioner filed this election petition that the election of the third respondent be declared null and void on the following three grounds:

(a) the first respondent had directly or indirectly whether by himself or by his servants or agents committed offences described and set out in the particulars thereto under ss 3 and 4 of the Election Offences Act 1954 ('EOA') in P184 and the election shall be declared void under ss 32(b) and 32(c) of the EOA;

(b) the second respondent had directly or indirectly whether by himself or by his servants or agents committed offences described and set out in the particulars thereto under ss 3 and 4 of the EOA in P184 and that the election shall be declared void under ss 32(b) and 32(c) of the EOA; and

(c) the third respondent personally or by his agents or servants contrary to s 10 of the EOA or other misconduct described and set out in particulars thereto have so extensively prevailed that they may be reasonably supposed to have affected the result of the election and that the election shall be declared void under s 32(a) of the EOA.

JOBNAME: No Job Name PAGE: 5 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

[3] On 5 July 2013, during case management, counsels for the first and second respondents and for the third respondent gave notice to raise preliminary objections to strike out the election petition.

[4] By a letter dated 8 July 2013, senior federal counsel ('SFC') on behalf of the first and second respondents gave notice to raise preliminary objections that the election petition be struck out with costs on the grounds that the election petition was defective as follows:

(a) the allegations made in paras 3.3(a)–(i), have no relevance to the first and second respondents;

(b) in respect of the allegations made in paras 3.1(a)–(g) and 3.2(b) – (c), the facts and grounds relied on failed to comply with r 4 (1)(b) read together with r 4(4) of the Election Petition Rules 1954 ('Rules') and s 32(b) of the EOA because the facts and grounds relied on in the Petition were unable to sustain the reliefs sought by the petitioner. Further, the facts and grounds raised in the petition would not and did not affect the result of the election pursuant to the subsection; and

(c) in respect of the allegations made in para 3.2(a), the election judge is not conferred with the jurisdiction to question the electoral roll because it is deemed to be final and binding as provided for in s 9A of the Elections Act 1958 (Act 19) ('EA'). Thus, the facts and grounds relied on in the petition failed to disclose any cause of action or are frivolous and vexatious or an abuse of the court's process.

[5] By an application dated 10 July 2013, the third respondent raised the following preliminary objections:

(a) the election petition dated 12 June 2013 was defective for non-compliance with r 9 read together with s 9 of the Advocates Ordinance (Sabah Cap 2);

(b) the petition was defective since the petitioner has failed to comply with the mandatory requirement of rr 3(1) and (2) of the Rules;

(c) the petition was defective since it was not properly served on the third respondent within the time stipulated pursuant to r 15(1);

(d) the petition was defective since the petitioner has failed to comply with the mandatory requirement of r 15(4);

(e) the amended election petition dated 24 June 2013 was defective since the petitioner failed to obtain leave for the said amendment from a judge of the High Court pursuant to s 38(2) of the EOA;

(f) the petitioner has failed to state under what limb of s 10(2) of the EOA that the third respondent or his agent or servant allegedly breached or

JOBNAME: No Job Name PAGE: 6 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

deemed guilty and this failure had severely prejudiced the third respondent in knowing under which provision of law the charges against him had been framed;

(g) the election petition was fundamentally defective for non-compliance with r 4(1)(b) and r 4(4)(3):

(i) the petitioner failed to provide the respective limbs of the relevant provisions of the laws referred to in the petition;

(ii) the matters pleaded in paras 2 and 3(3) of the petition did not contain the material facts as required by r 4(1)(b) and r 4(4)(3) of the Rules and lacked sufficient particulars and details which severely prejudiced the third respondent to be able to reply and defend the petition; and

(iii) the petitioner failed to plead of how the purported 'general bribery' had so extensively prevailed that it reasonably supposed to have affected the result of the election.

[6] On 9 July 2013, the third respondent also gave notice to raise a supplementary preliminary objection that the election petition be struck out with costs on the ground that the election petition was fundamentally defective by reason that the petitioner has failed to specifically plead s 11(1)(b) of the EOA in the petition.

[7] The facts showed that by a letter dated 27 June 2013, signed by a deputy registrar of the High Court at Kota Kinabalu, established that the petitioner's advocate Mr Marcel Jude a/l MS Joseph did not have a practicing certificate for the year 2013. The petitioner's advocate Mr Marcel Jude was and is the only advocate or counsel appointed by the petitioner to represent the petitioner in this election petition. That could be a reason why Mr Marcel Jude did not appear in court on 5 July 2013. He managed to obtain his practicing certificate for the year 2013 on 8 July 2013.

[8] This petition was not filed by the petitioner himself. It was filed by Mr Marcel Jude for and on behalf of the petitioner. Since the petitioner's advocate Mr Marcel Jude did not have a practicing certificate for the year 2013 prior to 8 July 2013, he was not qualified to practise as an advocate and as the counsel for the petitioner. At the material times Mr Marcel Jude had no standing to practise as an advocate in Sabah, could not file the election petition on behalf of the petitioner in Sabah on 12 June 2013 and could not appear in court to prosecute the election petition prior to 8 July 2013. The election petition filed by Mr Marcel Jude on behalf of the petitioner was defective and an abuse of the process of the court.

JOBNAME: No Job Name PAGE: 7 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

[9] Rule 3(1) of the Rules provides that the presentation of an election petition shall be made by delivering it at the office of the registrar. Rule 3(2) states that there shall also be left with the petition two copies thereof, that is to say the petitioner in this case was required to leave the petition together with two copies thereof. By a letter dated 12 June 2013, the petitioner's advocate Mr Marcel Jude only left two copies of the petition with the registrar.

[10] The petitioner in leaving only two copies of the petition had failed to comply with r 3(1) and (2). The court record showed that as at 5 July 2013, during case management, only two copies of the petition was left with the court registry. The failure by the petitioner to leave three copies of the petition in the court registry rendered the election petition defective for non-compliance with r 3(1) and (2).

[11] Thirdly, although the petitioner informed the court that he had served the petition on all the respondents, as at 5 July 2013, no affidavit of service had been filed by the petitioner pursuant to r 15(4). Rule 15(4) required that the petitioner must filed an affidavit of service to prove the service of the petition on all respondents to the petition. The petitioner in failing to file any affidavit of service had failed to comply with the mandatory requirement of r 15(4). The petition ought to be struck out on this ground.

[12] Fourthly, the court record also showed that the petitioner had on 24 June 2013 filed an amended election petition without the leave of the court and without any notice to and without any consent by the respondents. The amended election petition was defective in failing to comply with s 38(2) of the EOA.

[13] Section 38(2) of the EOA states that an election petition presented in due time may be amended with the leave of a judge of the High Court within the time within which an election petition may be presented. Any amendment to an election petition must be made within the time for the presentation of the petition.

[14] Section 38(2) of the EOA states that every election petition shall be presented within 21 days of the date of publication of the result of the election in the *Gazette*. The election results were published in the *Gazette* on 22 May 2013. Any election petition must be filed with 21 days from that date. The 21 days expired on 12 June 2013. Any election petition must be filed on or before 12 June 2013. Therefore any amendment to a petition with the leave of a judge must be made within the said 21 days. The record showed that the petitioner filed this election petition on 12 June 2013. The amended election petition, without any leave from a judge, was filed on 24 June 2013, outside the 21 days

JOBNAME: No Job Name PAGE: 8 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

as required by s 38(2) of the EOA. The amended election petition was out of time and defective.

[15] Further, the petitioner filed this petition against Tan Sri Abdul Rashid Abdul Rahman as the chairman of the election commission and sued on behalf of himself and as representing all other members of the election commission as the second respondent. The amendment, which was filed without leave and out of time, to the petition, had deleted Tan Sri Abdul Rahman as the chairman as the second respondent. Instead, the amended election petition is now against the election commission only and not against the chairman and members of the election commission. The amendment to the election petition is to substitute a new party to the petition. The amendment has introduced a new party and a new cause of action as against the second respondent and has turned the petition of one character into a petition of another and inconsistent character in respect of the second respondent.

[16] The effect of the amendment to the petition is also to withdraw the election petition against the chairman and members of the election commission as the second respondent. Rule 21(1) states that an election petition shall not be withdrawn without the leave of the judge. Such leave may be given upon the terms as to the payment of the costs and otherwise. Rule 21(2) provides that before leave for the withdrawal of an election petition is granted, there shall be produced affidavits by all the parties to the petition and their advocates, and by the election agents of all the said parties who were candidates at the election. The petitioner did not apply for the leave under r 21(1) and r 21(2) and the petitioner has failed to comply with the Rules. The amended election petition is defective and should be struck out on these grounds.

[17] Next, the respondents referred to the complaints pleaded in paras 2, 3.1, 3.2 and 3.3 and the particulars thereto in the election petition. It was submitted that the Election Petition did not contain the material facts to be pleaded as required by r 4(1)(b) and r 4(4) of the Rules.

[18] I shall deal with the first ground in para 3.1 of the petition. It is settled law that in election cases, strict compliance of the election legislations and regulations is required otherwise any election petition will be rendered defective and liable to be struck out in limine. Under r 4(1)(b) of the Rules it is mandatory that an election petition shall state briefly the facts and grounds relied upon to sustain the prayers sought for: *Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153; [2009] 4 CLJ 488. The facts complained of narrated in a petition must relate or associate the complaints with the provision of election laws the respondents are alleged to have transgressed. There must be such a nexus pleaded: *Gan Joon Zin v Fong Kui Lun*

JOBNAME: No Job Name PAGE: 9 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

& Ors [2004] 4 CLJ 729. The facts to be pleaded must be such as to make out a case for the petitioner: *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221, FC.

[19] In respect of para 3.1 of the petition, the petitioner did not specifically plead and it was not clear whether it was the first respondent or his agents or servants who had committed the alleged offences under ss 3 and 4 of the EOA. If the alleged offences were committed by the agents or servants of the first respondent, the petitioner did not plead nor identify who these agents or servants who had committed the alleged offences. The petitioner also did not plead whether the alleged offences committed by these unidentified agents or servants were with the knowledge and or the consent of the first respondent (see *Mohd Nazri Hj Din v Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors*, *Mohd Zaid bin Ibrahim v P Kamalanathan a/l P Panchanathan & Ors* [2010] 6 MLJ 363; [2010] 8 CLJ 608).

[20] In para (a) of the particulars, the petitioner did not plead nor set out the facts which constituted the alleged suspicious activities in the handling of the postal votes and whether and how such suspicious activities were in breach of the provisions of ss 3 and 4 of the EOA. The petitioner did not plead and failed to cite the specific provisions of ss 3 and 4 of the EOA which the first respondent or agents or servants were alleged to have transgressed. The petitioner also did not identify the voters and how many voters who were unable to vote at the election and whether these had affected the result of the election.

[21] In para (b) of the particulars, the petitioner did not identify the polling agent and the counting agent who were denied sufficient entry to the polling stations. The petitioner did not plead or identify whether the polling agent and counting agent were registered or accredited to the polling stations concerned and the petitioner did not identify the polling stations to which they were denied entry.

[22] Similarly, the petitioner did not identify the polling stations where the respondent or his agents or servants were alleged to have breached the limit of the 50m rule. The petitioner did not plead the specific provisions of s 26(1) which they were alleged to have breached. The petitioner also did not plead or set out any facts how the first respondent was biased towards BN and the third respondent.

[23] In para (d) of the particulars, the petitioner did not plead or set out the facts why it was wrong or inappropriate for the first respondent and his servants or agents to use the Dewan Sri Libaran for the purpose of the election, whether

JOBNAME: No Job Name PAGE: 10 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

there was any bias or prejudice to the petitioner resulting from such use of the Dewan Sri Libaran and whether and how this would affect the result of the election.

[24] In para (e) of the particulars, the petitioner did not plead whether and how many hours the indelible ink lasted. The petitioner did not identify who and how many of these voters whose indelible ink on their finger had been washed and how many of them had voted again and committed fraud at the election. The petitioner did not plead whether the alleged fraud resulting from the use of the indelible ink had in any way or manner had so extensively prevailed that they may be reasonably supposed to have affected or have affected the result of the election bearing in mind that the third respondent had won the election in P184 by a majority of 11,586 votes.

[25] In para (f) of the particulars, the petitioner did not plead or identify who and how many voters who were ineligible or who were not registered in the electoral roll but who were allowed to vote at the election. The results of the election which were published in the *Gazette* established that there were 39,772 registered voters for P184 and that only 31,303 votes were cast in the election and did not substantiate the allegation made by the petitioner in para (f) of the particulars thereto. The allegation was clearly misconceived.

[26] In para (g) of the particulars, the petitioner did not plead and did not identify the polling agent or counting agent who were alleged not given the proper opportunity to examine and scrutinise the votes. The petitioner did not plead that this had contravened reg 24 and reg 25 of Elections (Conduct of Elections) Regulations 1981 ('ECER').

[27] In respect of the allegations made in para 3.2 and the particulars thereto in the petition, the petitioner did not set out sufficient facts to sustain the grounds and the prayers pleaded in the petition.

[28] In the last paragraph at p 5 of the election petition, the petitioner alleged that the electoral roll for P184 was tainted with 60,673 dubious voters and therefore there was no opportunity for a free and fair election. These allegations were misconceived. The election results which were published in the *Gazette* on 22 May 2013 showed that there were only 39,772 registered voters in P184. Therefore there could not be 60,673 dubious voters in the electoral roll for P184. The petitioner did not identify who were these 60,673 dubious voters, whether they voted in the election in P184 and whether this would affect the result of the election.

[29] Section 9A of the Election Act states that after an electoral roll has been certified and notice of the certification has been published in the *Gazette*, the

JOBNAME: No Job Name PAGE: 11 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

electoral roll shall be deemed to be final and binding and shall not be questioned or appealed against in, or reviewed, quashed or set aside by, any court. In any event, prior to the certification of the electoral roll and the publication thereof in the *Gazette*, the petitioner did not question or challenge the correctness of the electoral roll for P184. Therefore there are no merits in the allegations.

[30] In respect of the allegations made in para 3.3 and the particulars thereto in the petition, again the petitioner did not set out sufficient facts to sustain the grounds and the prayers pleaded in the petition.

[31] In para (a) of the particulars, the petitioner did not plead the specific vehicles belonging to the government used by the third respondent and his servants or agents to conduct his election activities. The petitioner did not identify whether the third respondent and or his agents or servants had used these vehicles, the occasions, the dates and times when these were used, if they were used by his servants or agents whether they were used with the knowledge or consent of the third respondent and whether these amounted to any abuse or non-compliance with any written or election laws which they were alleged to have contravened.

[32] In para (b) of the particulars, the petitioner did not plead and identify whether it was the third respondent himself or his servants or agents who had offered bribes to voters in P184. If these bribes were carried out by his servants or agents, the petitioner did not identify these servants or agents and whether they were carried out with the knowledge or consent of the third respondent. The petitioner did not plead or identify the voters and how many of them had been offered bribes or had accepted the alleged bribes and whether such bribery have so extensively prevailed that they may be reasonably supposed to have affected the result of the election.

[33] In para (c) of the particulars, the petitioner did not plead and identify whether it was the third respondent himself or his servants or agents who were involved in mobilising foreigners without legitimate identification papers to campaign for the third respondent and Barisan Nasional. If the mobilisations were carried out by his servants or agents, the petitioner did not identify these servants or agents and whether they were carried out with the knowledge or consent of the third respondent. The petitioner did not plead or identify the foreigners and how many of them had been mobilised or had campaigned or had acted as agents of corruption and bribery for the third respondent and whether such mobilisations have so extensively prevailed that they may be reasonably supposed to have affected the result of the election.

[34] In para (d) of the particulars, the petitioner did not plead and identify

JOBNAME: No Job Name PAGE: 12 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

whether it was the third respondent himself or his servants or agents who utilised payments under BR1M and KRISMA to obtain votes for the election. If these payments were carried out by his servants or agents, the petitioner did not identify these servants or agents and whether they were carried out with the knowledge or consent of the third respondent. The petitioner did not plead or identify the voters and how many of them had been paid or had accepted the alleged payments and whether such payments have so extensively prevailed that they may be reasonably supposed to have affected the result of the election.

[35] In para (e) of the particulars, the petitioner did not plead and identify whether it was the third respondent himself or his servants or agents who had spent RM1,191,880 for the transportation expenses. If these expenses were incurred by his servants or agents, the petitioner did not identify these servants or agents and whether they were incurred with the knowledge or consent of the third respondent. The petitioner did not plead or identify the types of transportation used, the occasion, dates and times and how they were incurred, bearing in mind that the petitioner had alleged that the third respondent had used vehicles belonging to the government.

[36] In para (f) of the particulars, again the petitioner did not plead and identify whether it was the third respondent himself or his servants or agents who had offered bribes to voters in P184. If these bribes were carried out by his servants or agents, the petitioner did not identify these servants or agents and whether they were carried out with the knowledge or consent of the third respondent. The petitioner did not plead or identify the voters and how many of them had been offered bribes or had accepted the alleged bribes and whether such bribery have so extensively prevailed that they may be reasonably supposed to have affected the result of the election.

[37] In para (g) of the particulars, the petitioner did not plead and identify whether it was the third respondent himself or his servants or agents who had continued campaigning activities even after the time limited for campaigning. If the alleged campaigning were carried out by his servants or agents, the petitioner did not identify these servants or agents and whether they were carried out with the knowledge or consent of the third respondent. The petitioner did not plead or identify the dates, times and or occasions of these alleged campaigning activities outside the time limited for campaigning and how these had breached the provisions of the election laws. The petitioner did not plead whether such campaigning activities have so extensively prevailed that they may be reasonably supposed to have affected the result of the election.

[38] In para (h) of the particulars, the petitioner did not plead and identify whether it was the third respondent himself or his servants or agents who had tampered and destroyed the campaign materials and voting paraphernalia

JOBNAME: No Job Name PAGE: 13 SESS: 1 OUTPUT: Thu Aug 28 08:51:32 2014

belonging to the other candidates in P184. If these alleged tampering and destruction were carried out by his servants or agents, the petitioner did not identify these servants or agents and whether they were carried out with the knowledge or consent of the third respondent. The petitioner did not plead and identify the dates, the times and the occasions or places where such tampering and or destruction were carried out. The petitioner did not plead and identify the candidates whose campaign materials were tampered with and or destroyed and whether any complaints or reports were lodged.

[39] In para (i) of the particulars, the petitioner did not plead and identify whether it was the third respondent himself or his servants or agents who obstruct, harass or threaten unlawfully other workers of the other candidates or participants in P184. If the obstructions, harassments or threats were carried out by his servants or agents, the petitioner did not identify these servants or agents and whether they were carried out with the knowledge or consent of the third respondent. The petitioner did not plead or identify the workers and how many of them had been obstructed, harassed or threatened and whether any complaints or reports were lodged against the third respondent or his servants or agents on such obstructions, harassments or threats. The petitioner did not plead or identify the dates, the times and occasions when the obstructions, harassments or threats were made.

[40] Although the petitioner referred to s 10 of the EOA, the petitioner did not plead and specify the requisite provisions of s 10 whether and how the third respondent and his servants or agents had transgressed the specific provisions under s 10 of the EOA. Similarly, the petitioner failed to plead the requisite provisions of s 11 of the EOA whether and how the third respondent and his servants or agents had transgressed the specific provisions under s 11 of the EOA: *Kho Whai Phiaw v Chong Chieng Jen* [2009] 4 MLJ 776; [2009] 3 CLJ 201, FC.

[41] For the reasons given, the petition is defective and failed to plead the facts and grounds relied upon to sustain the prayers sought for. The petition is hereby struck out and the third respondent is duly returned. Costs of RM15,000 to the first respondent, RM15,000 to the second respondent and RM30,000 to the third respondent.

Petition struck out.

Reported by Afiq Mohamad Noor